

# ARKANSAS SUPREME COURT

No. 08-469

RAECHIO SMITH  
Petitioner

v.

HON. ROBERT WYATT, JR.,  
CIRCUIT JUDGE  
Respondent

**Opinion Delivered** September 25, 2008

PRO SE PETITION FOR WRIT OF  
MANDAMUS AND MOTION TO  
PROCEED IN FORMA PAUPERIS  
[CIRCUIT COURT OF JEFFERSON  
COUNTY, CV 2006-576]

PETITION MOOT; MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
GRANTED.

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## PER CURIAM

On August 1, 2006, petitioner Raechio Smith filed a pro se petition for writ of habeas corpus in Jefferson County Circuit Court, and, at the same time, he filed a motion to proceed *in forma pauperis*. On September 13, 2006, the circuit court entered an order that dismissed the petition. Petitioner filed a notice of appeal on September 29, 2006, along with a motion to proceed *in forma pauperis* on appeal and to prepare the record at public expense. A letter included in the record indicates that the circuit clerk then advised petitioner that he must pay the balance of his filing fee, in addition to the cost of the transcript, before the clerk would prepare the transcript. On November 29, 2006, petitioner filed a motion for extension of time to lodge the record on appeal and a motion to add the postjudgment motions and any ruling to the record. On January 8, 2007, petitioner filed a motion to expedite the rulings on the motions, and on February 8, 2007, he filed a second motion requesting an extension of time to lodge the record.

On January 22, 2007, petitioner filed in this court a motion for rule on clerk that also

requested permission to proceed without a copy of the record. We denied that motion on the basis that this court could not assume jurisdiction without a certified record. *Smith v. State*, 07-70 (Ark. Feb. 8, 2007) (per curiam). On April 17, 2008, petitioner filed this petition for writ of mandamus, in which he contends that the Honorable Robert Wyatt, Jr., Circuit Judge, failed to act in a timely manner on the motions. Petitioner submitted with his petition a request to proceed in this court *in forma pauperis*, along with an affidavit in support of that request.

Judge Wyatt filed a response to the mandamus petition and attached a copy of his order that disposed of the postjudgment motions, which was entered on April 23, 2008. The ruling on the postjudgment motions, however, did not provide an explanation for the delay of about eighteen months in responding to the postjudgment motions. In addition, although there were some references in petitioner's pleadings to an order setting a partial filing fee under Arkansas Code Annotated § 16-68-606 (Repl. 2005), no order ruling on the first motion to proceed *in forma pauperis* was included in the record. The order included with the response noted petitioner's failure to pay the balance of his filing fee and the cost of the transcript. We requested that the respondent file an amended response to (1) clarify whether, in fact, there was an order entered as to a partial filing fee that disposed of the original motion to proceed *in forma pauperis*, (2) fully explain the delay in action on the first motion to proceed *in forma pauperis*, if there was one, and (3) explain the reason for the delay as to the postjudgment motions.

Judge Wyatt has now filed an amended response, to which he has attached a certified copy of an order entered August 1, 2006, that found petitioner was not indigent, set a partial filing fee, and required petitioner to pay the balance of the filing fee by making payments as funds were credited to petitioner's prison trust account until the total fee was paid in full. Judge Wyatt indicated that he

had not been aware of the postjudgment motions until the petition for writ of mandamus was filed, that the motions, although filed, had not been presented to him. He emphasized that he had promptly acted on the motions after he was made aware of the petition for writ of mandamus and that the court had found the petition for writ of habeas corpus was frivolous and without merit.

This court has repeatedly urged all judicial districts to develop a system whereby judges are made aware of filings in their courts. *Cabral v. Keith*, 364, 456, 220 S.W.3d 683 (2005) (per curiam); *McCoy v. Phillips*, 357 Ark. 368, 166 S.W.3d 564 (2004) (per curiam). Judge Wyatt acknowledged through reference to an unpublished opinion that he was aware of that mandate and its application to postjudgment motions. But, he appears to argue that no procedures are necessary because the situation here was unusual in that he was not made aware of the motions by petitioner.

Our previous decisions have indicated that the responsibility is on the court to ensure procedures are in place so that the judge is informed by the clerk of pleadings that are filed. *See id.* The court, not a prisoner who files a postjudgment motion, carries the obligation to prevent unnecessary delays that hamper the administration of justice. That many prisoners do notify the court of motions filed does not relieve the court of its duty to ensure that it is aware of *all* motions filed.

Judge Wyatt's contention that he was unaware of the postjudgment motions until this petition was filed is at odds with his previous representations to one of our staff attorneys in a letter dated May 22, 2007. At that time, Judge Wyatt indicated an awareness of the motions, although he also asserted that the motions were made moot by the order dismissing the habeas petition. The order addressing the postjudgment motions was entered eleven months later, on April 23, 2008.

The amended response to the petition for writ of mandamus also asserts that the

postjudgment motions were made moot by entry of the order dismissing petitioner's habeas petition. Although the circuit court had already ruled on his standing as a pauper, with the postjudgment motion, petitioner sought to have the record prepared without payment of a fee. The circuit court's initial order and the order dismissing the habeas petition did not address that request. The court's ruling on the postjudgment motion to proceed *in forma pauperis* on appeal found that petitioner had failed to pay the remaining balance of his filing fee after paying the initial partial fee set out in the order under Act 340 of 1997 and that petitioner had additionally failed to pay the cost of the transcript. The ruling denying the motions was based upon those findings and the court's conclusion that the motions were frivolous and without merit.

The petition for writ of mandamus is now moot because the order entered on April 23, 2008, disposed of the issues in the postjudgment motions. The previous order, however, did not address petitioner's request to proceed with his appeal of the dismissal of the habeas petition. An issue becomes moot if the judgment will have no practical effect on the litigant and a decision on the issue would be advisory only. *McFarland v. State*, 337 Ark. 386, 989 S.W.2d 899 (1999). The issues in the postjudgment motions were related to the costs associated with the record on appeal, and the circuit court's previous orders did not address those issues.

The circumstances and response in this case give us cause for concern. To the extent that Judge Wyatt's response appears to indicate that any delay in ruling on the motions was justified because any appeal was without merit, we note that the circuit court does not have the authority to pass on the validity of an appeal and dismiss it sua sponte. *Noble v. State*, 326 Ark. 462, 932 S.W.2d 752 (1996) (per curiam). Moreover, a petitioner has the right to appeal an adverse ruling on a petition for postconviction relief, including a petition for writ of habeas corpus. See *Leavy v. Norris*,

324 Ark. 346, 920 S.W.2d 842 (1996) (per curiam).

The circuit court entered orders that disposed of the motions rendering the petition moot, but it did so only after a long delay and with requirements that would likely prevent the petitioner from pursuing an appeal. Whether the petition for writ of habeas corpus had merit or not, there may be questions raised by the order on the postjudgment motions that do have merit. But, regardless of the merit of any issue, the circuit court may not simply decline to act on a motion relating to indigency status on appeal and the timely lodging of the record.

Because petitioner had previously sought to file a motion for rule on clerk, and was prevented from providing a partial record that would confer jurisdiction to us, we grant petitioner leave to use the partial record provided here as the record for such a motion. Provided petitioner files his motion within thirty days of the date of this opinion, our clerk is directed to accept the same record for that motion. As the State does not contest petitioner's status as a pauper and his affidavit supports that claim, we grant petitioner's motion to proceed *in forma pauperis* in this court.

Petition moot; motion to proceed *in forma pauperis* granted.

Glaze, J., not participating.